

What You Need to Know If You Own or Purchase Property with Environmental Contamination

This fact sheet will help you understand how Michigan's environmental cleanup programs affect you as a property owner, operator or potential purchaser of contaminated property. While all your questions cannot possibly be addressed in these few pages, you can find out more about the state cleanup program by:

- Writing or calling us -- the Department of Environmental Quality (DEQ), Remediation and Redevelopment Division (RRD) -- at the address and phone number provided below. We'll make sure to connect you with the right person for help with your specific questions, and we'll send you the technical guidance you need to comply with the law.
- Visiting our Internet Home Page. Our Web Site has a complete version of the law regulating Michigan's revitalization and cleanup programs, along with other related information: www.michigan.gov/deqrrd.

◀ ■ NOTE **■**

This is a guidance document from the Michigan Department of Environmental Quality (DEQ). A thorough review of the statute, administrative rules and guidelines should be completed before making site-specific decisions.

The Part 201 statute, Administrative Rules and guidelines are available electronically at this DEQ/RRD web site: www.michigan.gov/deqrrd.

PART 201: THE LAW GUIDING MICHIGAN'S CLEANUP PROGRAM

Part 201 (Environmental Remediation) of the Natural Resources and Environmental Protection Act (1994 PA 451, as amended) regulates most sites of environmental contamination in Michigan. The Part 201 cleanup program is administered by the RRD.

The RRD is your source for more information on all of the issues discussed here. However, some contaminated sites are controlled by other parts of NREPA, such as: leaking underground storage tanks (Part 213); treatment, storage and disposal sites (Part 111); waste disposal areas (Part 115); oil, gas and mineral wells (Parts 615, 625). You can get information about these other requirements by calling the DEQ at 1-800-662-9278 or visiting www.michigan.gov/deq.

There are also <u>federal</u> cleanup laws and requirements that may affect you, including liability under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or Superfund), and the Resource Conservation and Recovery Act (RCRA).

Contact us if you have questions about liability under CERCLA or other laws.

ARE YOU LIABLE FOR A SITE OF CONTAMINATION?

Under Part 201, 213, 615 and 625, you are <u>not</u> liable for the cost of cleanup actions if:

1) you are not responsible for causing a release of a hazardous. substance; <u>and</u> you became an owner or operator of contaminated property

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<u>before</u> June 5, 1995 (or March 6, 1996 for sites regulated under Part 213);

OR

2) you become the owner or operator of a contaminated property on or AFTER June 5, 1995 (or March 6, 1996 for Part 213 sites), <u>and</u> you were not responsible for the release that caused the contamination, <u>and</u> you conduct an adequate Baseline Environmental Assessment (BEA) for your property prior to or within 45 days of becoming the owner or operator, <u>and</u> you submit the BEA to the DEQ within the required timeframes, <u>and</u> you disclose the results of the BEA to subsequent purchasers or transferees. (see Baseline Environmental Assessments)

The same liability principles apply to people who control, but do not own, property. We call them "operators." People who lease property will often be operators.

DO YOU HAVE TO CLEAN UP CONTAMINATED PROPERTY?

A "facility" is defined by Part 201 as any area, place or property where hazardous substance in excess of the established state cleanup standard for residential property has been released, deposited, disposed of, or otherwise comes to be located (see Cleanup Standards). Property is no longer a facility when actions to remove, reduce or treat the contamination are completed, lowering the amount of contamination to a level that is below the residential cleanup standards.

If you are liable for a facility, you are obligated by law to take appropriate response actions at that property. In particular, if you currently own or operate property that you know is a facility and you caused the contamination or are otherwise liable, your obligations include: immediately stopping a release at its source; controlling or eliminating any fire, explosion and direct contact hazard; removing certain liquid wastes and highly contaminated soils; investigating the nature and extent of the

contamination; and taking actions to clean up the contamination and prevent exposure to contamination.

DUE CARE OBLIGATIONS SECTION 20107a

Owners and operators of a facility, even if you are not liable for the contamination, have "due care" obligations.

Section 20107a of Part 201 specifically requires owners and operators to take due care measures to ensure that existing contamination on a property does not cause unacceptable risks and is not exacerbated. An owner or operator of a facility shall do all of the following with respect to contamination existing at the facility:

- Prevent exacerbation of the existing contamination.
- Prevent unacceptable human exposure and mitigate fire and explosion hazards to allow for the intended use of the facility in a manner that protects the public health and safety.
- ► Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party.
- ▶ Provide notification to the RRD and others.

Measures may include response actions such as providing alternate water or a barrier over contaminated soil to prevent people from drinking contaminated groundwater or being in contact with contaminated soil. What measures are needed is determined by evaluating both the site use and the existing contamination. Due care requirements are not related to the operator's liability owner or contaminants; they apply to non-liable parties and liable parties alike. The due care requirements were designed so contaminated properties could be safely used redeveloped.

The BEA and Due Care Web Page can be found at www.michigan.gov/bea.

BASELINE ENVIRONMENTAL ASSESSMENTS

A properly conducted Baseline Environmental Assessment (BEA) allows people to acquire or begin operating at a facility without being held liable for existing contamination. BEAs are used to gather enough information about the property being transferred so existing contamination can be distinguished from any new releases that might occur after the new owner or operator takes over the property.

A BEA is only performed on a property which is a facility. The only sure way to find out if a property is a facility is by evaluating the property and its history. You should review past activity on the property including land and chemical use, review regulatory agency files on the property, visually survey the property to look for signs of soil staining or other indicators of possible contamination, and collect soil and groundwater samples.

The level of effort required to do an adequate BEA will vary with the type and amount of contamination on the property in question and the proposed hazardous substance use. If you will use no hazardous substances or different hazardous substances than those present at the property, a BEA is relatively simple to do.

If you are planning to use the same hazardous substances that are present at the property, a BEA can be more complex and costly to complete since your assessment must allow for distinguishing any new release from old releases. In some cases, engineering controls or isolation zones can be used to distinguish new releases from old.

Most property owners rely on a professional consultant to conduct site studies and a BEA.

If you want to take advantage of the liability protection under Part 201, as a new owner or operator you must:

1) Conduct an adequate BEA prior to or within 45 days after the date of purchase, occupancy or foreclosure, whichever occurs first;

AND

2) Disclose the results of the BEA to the DEQ and subsequent purchasers and lessees.

Residential property owners are exempt from liability and the need to conduct a BEA if hazardous substance use at the property will be consistent with normal residential use. This includes chemical lawn treatments, paints, cleaners and other household products in quantities found in a typical home. There are other limited exemptions also requirement to perform a BEA, including exemptions for commercial lessees. However, it may be necessary in these cases to gather data to determine appropriate "due care" measures and potential limitations on the property use to prevent unacceptable exposures.

The BEA must be submitted to the DEQ within eight months of the date of purchase, occupancy or foreclosure, whichever comes first. You can choose to formally petition the DEQ to review the BEA within six months of completion of the BEA. There is a \$750.00 fee for this review and formal determination. For more information on preparing and submitting a BEA, and along with BEA instructions and forms, please visit the DEQ Web Site at www.michigan.gov/bea.

Completing a BEA can give you liability protection for existing contamination, which means you won't have to pay for cleaning up contamination you didn't cause. Remember, however, that you still have "due care" obligations.

CLEANUP STANDARDS

Part 201 authorizes the DEQ to set cleanup standards by considering how the contaminated land will be used in the future. Michigan's

cleanup standards are risk-based and reflect the potential for human health risk from exposure to potentially harmful substances at contamination sites. The RRD can send you cleanup standards and other technical guidance you will need to make use-based decisions about contaminated property.

If you are cleaning up a facility, you can choose an appropriate category of cleanup standard based on proposed site use. There are currently three main categories of land use-based cleanup residential. standards: commercial industrial. The residential cleanup standards are the most restrictive criteria for site remediation, generally because it is assumed that there is the areatest opportunity for exposure contamination in residential settings, especially for children. When a facility is cleaned up to residential standards, the property is considered safe for all uses.

If you propose to clean up your property based on commercial or industrial standards, you must demonstrate that your chosen category is appropriate for future land use and consistent with zoning at the property. No additional property restrictions are required, other than limiting the use of the property to commercial or industrial activities consistent with the zoning.

Three additional categories of cleanup standards include: limited residential, limited commercial, and limited industrial. These "limited" categories exist for circumstances that require restrictions on the use of property or the natural resources beyond just zoning limitations and may require exposure barriers (i.e., fencing, paving) or prohibitions on resource use (i.e., don't drink the groundwater) to keep people from being exposed to contamination now and in the future.

If you propose to clean up your property based on any of the limited categories, certain restrictions must be placed on the property deed to ensure that the use restrictions and exposure barriers remain in place. Additionally, a legally enforceable agreement with the DEQ, and a financial insurance mechanism will be required.

Part 201 also provides for cleanups based on recreational land use. Cleanup standards will be established for each site based on the type of exposure for the specific type of recreational use (i.e., playgrounds, walking trails, sport fields, etc.).

WE WANT TO WORK WITH YOU!

The most important thing to remember is that environmental solutions in Michigan depend on the nature and extent of the contamination and how you want to use the property: What kinds and quantities of contamination are present? Is there a chance that people will be exposed to the contamination? Has the contamination migrated off-site into groundwater, soil, lakes, streams or other natural resources? Each piece of property, each contamination scenario, and each proposed new use is different. Contact us directly to discuss your specific situation and your responsibilities under Part 201.

The DEQ is committed to working with owners, operators and purchasers of contaminated sites to make it easier and safer to redevelop property contaminated with hazardous substances.

If you would like to receive prompt, electronic e-mail notices of any new or updated documents we generate and post to our Internet Web Site, simply subscribe to the DEQ-RRD Listserver at www.michigan.gov/deq (select Inside DEQ, Contact DEQ, then select Environmental Listserver Subscriptions, then follow instructions to subscribe), and we will keep you posted!

Revised October 2006